## REMARKS

Claims 1 to 3 and 5 to 14 are pending in the application, of which claims 1 and 9 are independent.[1] Favorable reconsideration and further examination are respectfully requested.

Claims 1 to 6 were rejected over UK Patent No. GB2299914A (Jones) in view of U.S. Patent No. 6,501,760 (Ohba). As shown above, Applicant has amended the claims to define the invention with greater particularity. In view of these amendments, withdrawal of the art rejection is respectfully requested.

Amended independent claim 1 defines a method for use in transmission of data packets, where the data packets comprise packet headers that include priority information, and where the priority information identifies the data packets as high priority data packets or as low priority data packets. The method includes transmitting the data packets via at least one of a first transmission facility and a second transmission facility, where the second transmission facility is redundant to first the transmission facility. The data packets are transmitted in accordance with Internet Protocol (IP). Transmission includes identifying which of the data packets are low priority data packets and which of the data packets are high priority data packets based on the priority information, transmitting the high priority data packets via the first transmission facility, transmitting the low priority data packets via the second transmission facility, switching transmission of the high priority data packets from the first transmission facility to the second transmission facility if there is a problem with the first transmission facility, and discarding low priority packets when high priority packets are transmitted via the second transmission facility.

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[1] The Examiner is urged to independently confirm this recitation of pending claims.

The applied art is not understood to disclose or to suggest the foregoing features of claim 1. In particular, the art is not understood to disclose or to suggest at least switching transmission of the high priority data packets from the first transmission facility to the second transmission facility if there is a problem with the first transmission facility, and discarding low priority packets when high priority packets are transmitted via the second transmission facility.

More specifically, Jones describes a system that includes slot controllers 11a to 11f and switch fabrics 14a and 14b (see Fig. 1 of Jones). In the Jones system, a slot controller re-routes ATM cells between switch fabrics in the event that one switch fabric becomes unavailable. Jones was said to describe switching ATM cells having a different priorities from one path to another. However, as correctly noted on page 4 of the Office Action, Jones does not describe discarding low priority packets when high priority packets are switched for transmission. Ohba, however, was cited to make up for this deficiency of Jones.

Ohba does appear to describe discarding packets of lower priority, although not in a context that is similar to the Jones system. Applicants, however, contend that the combination of Ohba with Jones in the manner suggested in the Office Action is improper as a matter of law and, therefore, the rejection should be withdrawn.

In this regard, it is elemental to that, to support a rejection over a combination of references, there must be some suggestion to make the combination in the references themselves or in the knowledge of those skilled in the art. In this case, Jones clearly teaches against discarding packets when re-routing the packets. For example, on page 4, Jones states:

> As long as the B path to the target slot controller is available for a particular CBR cell, it will use the B path, but if that path is unavailable, the control means in the source slot controller will automatically route the cell over the A path. Similarly, *the other classes will re-route through the B path should the A path fail to a particular slot controller.* (lines 2 to 7) (emphasis added)

Thus, Jones re-routes all cell classes to prevent cell loss. Only if both paths fail will cells be discarded (lines 12 and 13).

Furthermore, Jones calibrates the capacity of its switch fabric in order to prevent cell loss. As explained on page 4 of Jones:

> One option in redundant mode would be to send, say, cells of priorities 1 and 3 through one switch fabric and those of priorities 2 and 4 through the other switch fabric, *each switch fabric operating at a maximum of half its maximum capacity, and therefore providing the possibility of re-routing through the other switch fabric should a path fail in the first, without the risk of exceeding the capacity of the switch* to handle the total loading of all four priorities of cells. (lines 14 to 20) (emphasis added).

Since Jones is clear about not wanting to discard cells, Applicant submits that the combination of Jones with Ohba (which does show discarding cells) is improper, and respectfully requests withdrawal thereof.

For at least the foregoing reasons, claim 1 is believed to be patentable. New independent claim 9 contains limitations that are similar to claim 1, and is also believed to be patentable.

Each of the dependent claims is also believed to define patentable features of the invention. Each dependent claim partakes of the novelty of its corresponding independent claim and, as such, has not been discussed specifically herein.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as

an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at 617-521-7896.

No additional fees are believed to be due for this response. However, if any additional fees are due including, but not limited to, claims fees and extension fees, please charge them to deposit account 06-1050, referencing Attorney Docket No. 12758-048US1.

Respectfully submitted,

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